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DECISION

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THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-204915 DATE: January 15, 1982

MATTER OF: Peter D. Pendergast - Lease termination expenses - Option to purchase

DIGEST: Employee who entered into a lease/purchase agreement and resided in a house at his old duty station for 12 months is not entitled to reimbursement of the money paid on the lease when he relocates prior to exercising his option to purchase. The provisions of 5 U.S.C. § 5724a(a)(4), do not allow reimbursement when no purchase, that is, no grant of equitable or legal title, has occurred. Further, in the absence of any exercise of the option, the claimant has not forfeited the money. Thus, reimbursement may not be made under provisions of the Federal Travel Regulations, para. 2-3.1, which allows reimbursement for miscellaneous expenses.

Ms. Anita R. Smith, Authorized Certifying Officer, United States Department of Agriculture, requests an advance decision as to whether reimbursement may be made for relocation expenses incurred by Mr. Peter D. Pendergast, an employee of the Food and Nutrition Service, incurred when he entered into a lease with an option to purchase a residence at his former duty station.

The issue to be decided in this case is whether, under 5 U.S.C. § 5724a(a)(4) (1976), money paid on a lease with an option to purchase constitutes a reimbursable relocation expense incurred in a real estate transaction when the claimant relocates prior to exercising the option to purchase. Based on the cited statutory provision as implemented by the Federal Travel Regulations (FTR) (FPMR 101-7, May 1973), we have determined that payment is not authorized.

On December 30, 1980, by Travel Authorization Number 1-307-04, Mr. Pendergast was authorized a permanent change of station from Robbinsville, New Jersey, to Burlington, Massachusetts. In February 1980, Mr. Pendergast entered into a lease/purchase agreement for a residence in Willingboro, New Jersey. The terms of the lease gave Mr. Pendergast the

option to purchase the residence for $56,000 on or before February 24, 1981. Upon Mr. Pendergast's exercise of the purchase option, $300 of the monthly rental of $450 was to be applied against the purchase price.

Mr. Pendergast contends that he was in the preliminary stage of exercising his option to purchase at the time he was notified of his transfer. He states that due to his relocation, and in accordance with the terms of the lease, he forfeited a total of $3,600 that would have been applied against the purchase price.

The provisions of 5 U.S.C. § 5724a authorize payment of relocation expenses to transferred employees. Subsection (a)(4) provides, in part, for the payment of expenses of the sale of a residence, or the settlement of an unexpired lease of the employee at the old official station, and for purchase of a home at the new official station.

The execution of a lease with an option to purchase has been held not to constitute a purchase of a residence under the meaning of section 5724a(a)(4). In the case of Marion B. Gamble, B-185095, August 13, 1976, the employee entered into a lease/purchase agreement upon arrival at his new duty station and, upon exercising his option 10 months later, sought reimbursement for the total expenses. On the question of whether such expenses were proper for reimbursement, we held that section 5724a(a)(4), does not apply to lease/purchase transactions, in which only an interest in property, rather than legal or equitable title, is passed. A purchase, for purposes of section 5724a(a)(4) and the implementing regulations, consists of the conveyance of some form of ownership. A mere interest, such as the opportunity to purchase the property, does not suffice. In fact, until Mr. Pendergast exercised the option to purchase, he was under no obligation to purchase the residence at all. In the present case the lease/purchase agreement did not pass title to Mr. Pendergast. Therefore, payment is not authorized under 5 U.S.C. § 5724a(a)(4).

As an alternative to reimbursement under 5 U.S.C. § 5724a(a)(4), employees may be paid in certain circumstances for miscellaneous expenses incurred due to the discontinuance of one residence and the establishment of a residence at a new location. FTR para. 2-3.1. The forfeiture of a deposit made

on a residence is among the expenses that have been covered. 55 Comp. Gen. 628 (1976); Richard E. Whitmer, B-196002, March 18, 1980. However, although Mr. Pendergast has characterized his loss as a forfeiture, we do not believe that the particular facts of this case warrant such a conclusion. His lease agreement provides that the amount of $300 shall be credited toward the purchase price only in the event that the tenant has exercised the option to purchase. Paragraph 3 of the lease agreement defines the exercise of the option as follows: "The said option must be exercised in writing, signed by Tenant, and delivered to Landlord's attorneys, * * * either personally or by certified mail, no later than February 24, 1981 * * *." Further, the lease agreement also required payment of an additional $1,000 in order to be effective.

Mr. Pendergast had not completed the process of exercising the option at the time of his relocation. His file contains only a Certificate of Eligibility from the Veterans Administration, which demonstrates an intent to purchase but certainly is not conclusive. The option was not exercised. Thus, the provision in the lease cited by Mr. Pendergast in support of his claim, which provided for forfeiture in the event of a failure to purchase never became applicable. The amount of $450 which Mr. Pendergast paid each month constituted rent rather than a deposit on the purchase price of the residence.

For the reasons cited above, Mr. Pendergast's claim for the reimbursement of relocation expenses is disallowed.

Milton J. Socolar

for Comptroller General
of the United States